IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1230 OF 2005

Hiralal Ramdas Kankhar ..Petitioner.

Vs.

Koshish ENT Charitable Trust & Ors..Respondents.

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Mr.Manish Mistry i/b M/s.M.P.Vashi & Associates for the Petitioner.

Mr.C.H.Gangan for Respondent Nos.1 to 3.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

25th April, 2005.

P.C. :

The Petitioner served as a Craft and P.T. Teacher in the Second Respondent which is a school for the hearing impaired. It appears that there were complaints of misconduct against the Petitioner. The case of the management is that the Petitioner submitted his resignation on 30th September, 2003 and that his services were brought to an end with effect from 1st October, 2003. The

contention of the Petitioner was that the letter of resignation was not voluntary and was taken under duress. On 2nd December, 2003 the Petitioner moved this Court in a petition under Article 226. The Petition was disposed of by the Division Bench on 16th June, 2004 leaving it open to the Petitioner to move the School Tribunal where he had an alternate remedy. All questions were left open. The Petitioner thereafter moved the Tribunal on 1st July, 2004 within a fortnight of the order of the Division Bench. There was a delay on the part of the Petitioner and an application for condonation was filed.

The Tribunal by its order dated 30th March, 2005 has declined to condone the delay on the part of the Petitioner holding that the delay between the date of termination (1st October, 2003) and the date (2nd December, 2003) on which the Petitioner moved this Court in prior proceedings has not been sufficiently explained. I am of the view that the Tribunal has adopted an extremely technical view of the matter. The Petition was pending before this Court between 2nd December, 2003 and 16th June, 2004. The Petitioner was

granted liberty to move the School Tribunal since an alternate remedy was available. The Petitioner did so with reasonable dispatch within a fortnight of the order of the Division Bench. Unquestionably all questions have been left open by the Division Bench to be urged on merits. Hence, it would not be either appropriate or proper for this Court to express any view on whether or not the resignation from service was voluntary. That is a matter to be decided by the Tribunal. However, in so far as the delay is concerned, I am of the view that having regard to the facts and circumstances it should be condoned. There is no negligence or deliberate omission on the part of the Petitioner in pursuing his remedies against the termination from service. In the circumstances, the impugned order of the Tribunal dated 30th March, 2005 is quashed and set aside. The Tribunal shall now hear and dispose of the appeal after registering it on merits, after furnishing to the parties an opportunity of bearing heard.

The Petition is accordingly disposed of. There shall be no order as to costs.